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Paper No. 4

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JUN 04 2001

**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of :
Levkoff et al. :
Application No. 09/610,402 : ON PETITION
Filed: 5 July, 2000 :
Attorney Docket No. MSGNT-001 :

This is a decision on the petition under 37 CFR 1.48(a), filed on 30 January, 2001, requesting correction of the inventorship of the above-referenced patent application.

This is also a decision on the petition under 37 CFR 1.183, filed on 30 January, 2001, to waive 37 CFR 1.63 and 1.67, which require that the named inventor execute a supplemental declaration

The petitions are dismissed.

The present application was filed on 5 July, 2000, with an executed declaration naming Jonathon Stephen Levkoff as the sole inventor.

On 3 January, 2001, a petition under 37 CFR 1.48(a) was filed, seeking to correct the inventorship by adding as Peter A. Rinfret, Michael Elling, and Sunir Kochhar as joint inventors. The petition is accompanied by

(a) a statement signed by Messrs. Rinfret, Elling, and Kochhar stating that the omission occurred without deceptive intention;

(b) consent of the assignee as given by Peter Rinfret, Chairman and CEO of MessageNet LLC, assignee of record.

Petition Under 37 CFR 1.48(a)

37 CFR 1.48(a) requires that an amendment to the named inventive entity be accompanied by: (1) a petition including a statement from each person being added and from each person being deleted as an inventor that the error occurred without deceptive intention on his or her part; (2) an oath or declaration by each actual inventor or inventors as required by 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47; (3) the fee set forth in 37 CFR 1.17 (I); and (4) the written consent of any existing assignee, if any of the originally named inventors has executed an assignment.

The petition lacks item (2). The new declaration is not signed by joint inventor Levkoff. Additionally, as described below, petitioners have not provided sufficient showing under 37 CFR 1.183 to waive the rules under 37 CFR 1.63 as they pertain to obtaining the signature of all inventors on the supplemental declaration.

Petition Under 37 CFR 1.183

Suspension of the rules under 37 CFR 1.183 may be granted in an "extraordinary situation, when justice requires." The facts presented on the record do not adequately establish an extraordinary situation. Petitioner has not sufficiently established any special circumstances of equities that would require suspension of the rules in the interests of justice.

There is no requirement for a showing under 37 CFR 1.47, as noted above. This application bears an original Declaration executed by inventor Jonathon Stephen Levkoff (Levkoff), and thus, the provisions of 37 CFR 1.47 do not apply in this instance. Nevertheless, it is appropriate to apply the principles thereof to the situation at hand.

The petition is deficient in that it does not adequately show or provide proof (a) that a copy of the application (specification, including claims, drawings, if any, and the oath or declaration listing the actual inventors) was sent or given to Levkoff, and (b) that Levkoff refused to sign the new declaration after receipt thereof. Petitioners may show that the application was sent or given to Levkoff by providing a copy of the cover letter transmitting the new declaration or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details. Likewise, proof that Levkoff refused to sign the

new declaration must be provided. If there is a written refusal, petitioners should submit a copy of that written refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner of Patents and Trademarks
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Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood at 703.308.6918.



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